in the several states, with the result, as above stated, that in over two-thirds of the states and territories there is now in force the so-called Negotiable Instruments Law. In view of this effort for uniformity the decision in the principal case seems especially unfortunate. The court conceded that the matter was with them an open question and that there were the two lines of authority. As pointed out above the very great weight of authority even in the absence of statutory provision is opposed to the Minnesota court's conclusion. Not only is the numerical weight of authority opposed, but the best reason, it is believed, is with the cases holding the check not an assignment. Here was an opportunity for the court to manifest a broad minded appreciation of the situation and the effort of years for uniformity in this branch of the law. The court's inability to look beyond the borders of its own state is very much to be regretted. R. W. A.

THE "FINGER-PRINT" CASE.—On February 16, 1912, Thomas Jennings was hanged in Chicago for murder. The sustained effort to secure the accused's freedom has resulted in the judicial recognition, for the first time in a court of last resort of one of the United States, of the use of finger prints as a system of identification, of their admissibility in evidence for the purposes of comparison, and of the status as experts of those conversant with the workings of the system. *People* v. *Jennings* (Ill. 1911) 96 N. E. 1077.

Upon the trial it was established that at the time of the murder the back porch of the victim's home had been recently painted. Entrance to the house was gained through a rear window of the kitchen. Near this window was the porch, on the railing of which a person entering the window could support himself. On the railing in the fresh paint was the imprint of four fingers of someone's left hand. This railing was removed in the early morning after the murder by the officers from the identification bureau of the Chicago police force and enlarged photographs were made of the prints. The accused had once been a prisoner in the penitentiary at Joliet, where a print of his fingers was taken, and another print was taken after his arrest on the charge of murder. These impressions were likewise enlarged for the purpose of comparison with the enlarged photographs of the prints on the railing. Four witnesses, over the objection and exception of defendant's counsel, testified as experts that in their opinion the prints on the railing and the prints taken from Jennings' fingers by the identification bureau were made by the same person. Error was assigned on several other grounds, but the ground relied upon by counsel was the admission of the evidence of the finger prints, and the case has been known as the "finger-print" case.

In pronouncing the evidence as to the finger prints admissible, Chief Justice CARTER, speaking for the court, says: "It is further contended that the evidence as to the comparison of photographs of the finger marks on the railing with the enlarged finger prints of plaintiff in error was improperly admitted. No question is raised as to the accuracy of the photographic exhibits, the method of identifying the photographs, the taking of the finger prints of the plaintiff in error or the correctness of the enlargements, as shown by the

exhibits introduced in evidence. It is earnestly insisted, however, that this class of testimony is not admissible under the common law rules of evidence, and as there is no statute in this state authorizing it the court should have refused to permit its introduction. No case in which this question has been raised has been cited in the briefs, and we find no statutes or decisions touching the point in this country. This class of evidence is admitted in Great Britain. In 1909 the Court of Criminal Appeals held that finger prints might be received in evidence, and refused to interfere with a conviction below, though this evidence was the sole ground of identification. *In re Castleton's Case,* 3 Crim. App. 74. While the courts of this country do not appear to have had occasion to pass on the question, standard authorities on scientific subjects discuss the use of finger prints as a system of identification, concluding that experience has shown it to be reliable. 10 ENCY. BRITTANNICA (11th Ed.) 376; 5 NELSON'S ENCY. 28. See also GROSS' CRIM. INVESTIGATION (Adams Transl.) 277; FULD'S POLICE ADMINISTRATION 342; OSBORN'S QUESTIONED DOCUMENTS, 479. * * * We are disposed to hold from the evidence of the four witnesses who testified, and from the writings we have referred to on this subject, that there is a scientific basis for the system of finger print identification, and that the courts are justified in admitting this class of evidence; that this method of identification is in such general and common use that the courts cannot refuse to take judicial cognizance of it. Such evidence may or may not be of independent strength, but it is admissible, the same as other proof, as tending to make out a case. * * *"

Although, as the court says, there is no American case to be found holding that an accused may be identified by a comparison of his finger prints with certain other finger prints found upon the scene of the crime, identification by comparison is no new thing in the law, and the authorities are full of analogous cases. One of the oldest methods of establishing the identity of the accused, in cases where pieces of writing are properly offered in evidence, is by a comparison of these pieces of writing with other writing of the accused, the genuineness of which has been established. *Sidney's Case,* 9 How. St. Tr. 818; *Hayes's Case,* 10 How. St. Tr. 307, and *R.* v. *Silverlock,* [1894] 2 Q. B. 766, show the development of English ideas with regard to this method of establishing identity, and while the rulings have not always been harmonious as to what might be used as the standard with which to compare the disputed writing, in what cases such a comparison might be made, and who might make the comparison, the underlying principle has always been the same. In this country the different rulings all recognize the appropriateness of the method. *Stokes* v. *U. S.,* 157 U. S. 187; *Massey* v. *Farmers' Nat. Bank,* 104 Ill. 327; *People* v. *Molineaux,* 168 N. Y. 264. So also a comparison of the spelling in the different specimens of handwriting has been allowed for the purpose of establishing identity. *Brookes* v. *Tichborne,* 5 Exch. 929; *U. S.* v. *Chamberlain,* 12 Blatchf. 390, Fed. Cas. No. 14,778; *Bevan* v. *Atlantic Nat. Bank,* 142 Ill. 302. In *State* v. *Kent,* 83 Vt. 28, decided in 1909, which was a prosecution for murder, the question arose whether the inscriptions, "E. Kent" and "E. K." carved in capitals like print on the door of a barn were carved by the defendant. A lawn mower handle on which was the inscription

"E. Kent," also in capitals like print, done in pencil, and the acknowledged work of the defendant, was admitted in evidence for comparison to establish the defendant's identity as the murderer. Here it was shown that the defendant had slept in the barn on the night of the murder, that he had a habit of whittling, and that fresh whittlings were found on the floor below the place where the inscription was cut.

Comparison of the person, features, characteristics, and peculiarities of the defendant with the person, features, characteristics, and peculiarities of the perpetrator of the crime has always been recognized by the courts as a more or less certain method of establishing the identity of the accused. Wherever evidence of such comparison has been excluded it has not been on the ground that it was incompetent, but because it has been held that in the procurement of the standard for the comparison, the constitutional privilege of the accused against self-crimination was violated. In proceedings in rape, seduction, fornication, and bastardy, a comparison of the child of the complaining witness with the defendant is generally allowed to establish the identity of the defendant as the father of the child. HUBBACK'S EVIDENCE OF SUCCESSION, 276, 277, (*Douglas Cause*, House of Lords, 1769, *Day* v. *Day*, Huntington Ass. 1797), *State* v. *Danforth*, 73 N. H. 215; *Finnegan* v. *Dugan*, 14 Allen 197; *State* v. *Horton*, 100 N. C. 443; *Paulk* v. *State*, 52 Ala. 427; *People* v. *Wing*, 115 Mich. 698. The contrary doctrine has been laid down in the following cases but in many of them appears some special circumstance, such as the extreme infancy of the child, which takes the cases out of the general rule. *Robnett* v. *People*, 16 Ill. App. 299; *Clark* v. *Bradstreet*, 80 Me. 454; *People ex rel. Fuller* v. *Carney*, 29 Hun 47; *State* v. *Neel*, 23 Utah 541. In case of the death of the putative father a photograph, proven to be a good likeness, is admissible in evidence for comparison with the child in court. *In re Jessup's Estate*, 81 Cal. 408; *Shorten* v. *Judd*, 56 Kan. 43; *Farrell* v. *Weitz*, 160 Mass. 288. Inspection of a defendant to determine color or race has been allowed. *Gentry* v. *McMinnis*, 3 Dana 382; *Garvin* v. *State*, 52 Miss. 207; *Warlick* v. *White*, 76 N. C. 175; *Hudgins* v. *Wrights*, 1 Hen. & M. 134. In *Daniel* v. *Guy*, 23 Ark. 50, the plaintiff, in a suit for freedom, was allowed to exhibit her bare feet to the jury, foot formation being evidential of race. If age is relevant, the tribunal may properly observe the person brought before it. *Langley* v. *Mark*, Cary 53; *Jones* v. *State*, 106 Ga. 365; *Com.* v. *Hollis*, 170 Mass. 433. Testimony of witnesses as to marks, scars, and other peculiarities is allowed. *Vaughan's Trial*, 13 How. St. Tr. 486, 517; *R.* v. *Buckworth*, 1 Sid. 377; *State* v. *Ah Chuey*, 14 Nev. 79; *O'Brien* v. *State*, 125 Ind. 38. In *Trulock* v. *State*, 70 Ark. 558, the mode of walking, and in *State* v. *Lytle*, 117 N. C. 799, the chunky build of the perpetrator of the crime was compared with these respective characteristics of the accused to determine the identity of the latter. In *Com.* v. *Sturtevant*, 117 Mass. 122, the deceased having been murdered by a left-handed blow, the fact that the defendant was left-handed was held admissible, and in *Com.* v. *Webster*, 5 Cush. 295, (Bemis' Rep. 89), the knowledge of anatomy as shown in the mode of dissecting the victim's body was admitted to identify the accused, a medical professor. A

comparison by a witness of the photograph of the accused with his recollection of the appearance of the guilty person is allowed for the purpose of identification. *R.* v. *Tolson,* 4 F. & F. 103; *Beamish* v. *Beamish,* Ir. Rep. 10 Eq. 413; *State* v. *Ellwood,* 17 R. I. 763; *Brooke* v. *Brooke,* 60 Md. 524. The mere opinion of the witness that the accused looks like or is the person who committed the crime is allowed. *State* v. *Powers,* 130 Mo. 475; *Woodward* v. *State,* 4 Baxt. 322; *State* v. *Johnson,* 67 N. C. 55; R. V. Burke, 2 Cox Cr. C. 295. *Contra, Murphy* v. *State,* 41 Tex. Crim. Rep. 120.

Identification by means of the comparison of the sound of the voice of the defendant with the sound of the voice of the perpetrator of the crime as remembered by the witness, has always been allowed. *Hulet's Trial,* 5 How. St. Tr. 1186; *Harrison's Trial,* 12 How. St. Tr. 834; *Ogden* v. *People,* 134 Ill. 599; *Com.* v. *Hayes,* 138 Mass. 185; *Price* v. *State,* 35 Tex. Crim. Rep. 501. In *Mack* v. *State,* 54 Fla. 55, the conviction of a negro for rape depended solely upon the recognition of his voice by the prosecuting witness. In *Brown* v. *Com.,* 76 Pa. 319, the previous conversation, which was the witness' basis of comparison, was had through a speaking tube. *Walker* v. *State,* 50 Tex. Crim. Rep. 221, and *Pilcher* v. *U. S.,* 113 Fed. 248, state the contrary doctrine, but there were special circumstances decisive of each of these cases. Conversation through a telephone as a standard for comparison has been allowed, although there is authority both ways on this point. *Vaughan* v. *State,* 130 Ala. 18; *People* v. *McKane,* 143 N. Y. 455. The principal case refers to the identification of an accused by a comparison of the footprints found at the scene of the crime with the footprints of the accused. In *Shaw's Case,* 1 Lew. Cr. C. 116, the court refused to allow such a comparison because the witness had not looked at the feet of the accused, but acknowledged the admissibility of such a comparison if properly made. In *Jones* v. *State,* 63 Ga. 395, the court held that the fact that tracks leading from the house, in which a larceny had been commited during a fire, to the hiding place of the stolen property, corresponded with the tracks made by the shoes of the accused, was admissible on the prisoner's trial for arson. And such a comparison has been quite generally held competent. *Carlton* v. *People,* 150 Ill. 181; *People* v. *Searcey,* 121 Cal. 1; *Johnson* v. *State,* 30 Vroom. 535; *People* v. *Van Wormer,* 175 N. Y. 188; *State* v. *Graham,* 74 N. C. 646; *Pitts* v. *State,* 60 Tex. Crim. Rep. 524; *State* v. *Fuller,* 34 Mont. 12. A comparison of the print of the accused's bare foot with foot prints discovered at the scene of the crime has been held to be competent evidence to establish identity. *Gilmore* v. *State,* 99 Ala. 154; *Mann* v. *State,* 22 Fla. 600. The case of *State* v. *Miller,* 42 Vroom. 527, is the nearest approach to the principal case to be found in the American authorities. In the house where the homicide took place there was found upon the wall of one of the rooms the imprint of a bloody hand. Before accused had been arrested he accompanied some of the peace officers to this house and while there he was asked to place his hand upon the bloody mark, which he did. It was held that as the request to place his hand upon the mark was voluntarily complied with by the accused, the bystanders were competent to express an opinion as to the coincidence between the outline of the hand and the outline of the print. A section of the

wall containing the print was brought before the jury. In England the courts have admitted evidence of the comparison of finger prints. In the case of *Thomas Herbert Castleton,* 3 Crim. App. 74, the only evidence to sustain the conviction of the accused was finger prints corresponding to his own on a candle found in the burglarized house.

When the possibilities of mistake in the methods of identification now allowed by the courts are considered in connection with the known and thoroughly proven infallibility of the system in question, the wonder is not that the courts in this country have accepted the finger print system of identification, but that its judicial recognition has been so long deferred. See "An Afternoon with Bertillon," Vol. 100, No. 8, *The Outlook,* p. 425. The decision of the Illinois court is unquestionably correct.

From the time when this opinion was handed down until the execution of the court's sentence, no effort was spared to secure Jenning's freedom. At the very hour of execution, lawyers were vainly arguing for a writ of habeas corpus in the Federal court on the plea that when Jennings was compelled to give the Bertillon bureau an imprint of his fingers, he was made to testify against himself, and his constitutional rights were thereby violated. *State* v. *Garrett* (1874), 71 N. C. 85, contains an able discussion of this question. In that case the accused, who claimed that her hand was burned, was compelled by the coroner to exhibit it at the inquest. At the trial in the circuit court the prisoner objected to the admission of the testimony of a doctor who had seen her hand, and relied on the case of *State* v. *Jacobs* (1850), 5 Jones Law 259, which holds that a judge has not the right in a criminal prosecution to compel the defendant to exhibit himself to the jury for the purpose of enabling them to determine his status as a free negro. "The distinction between that and our case," says the court in the Garrett case, "is that in the *Jacobs* case the prisoner himself on trial was compelled to exhibit himself to the jury * * * and thus he was forced to become a witness against himself * * * In our case not the prisoner, but the witnesses were called to prove what they saw upon inspecting the prisoner's hand, although the inspection was obtained by intimidation. * * * The later cases are uniform to the point that a circumstance tending to show guilt may be proved, although it was brought to light by declarations inadmissible *per se,* as having been obtained by improper influence." WIGMORE, EVIDENCE, § 2265, says: "The limit of the privilege is a plain one. From the general principle it results that an inspection of the bodily features by the tribunal or by witnesses cannot violate the privilege because it does not call upon the accused as a witness, *i. e.,* upon his testimonial responsibility. That he may in such cases be required sometimes to exercise muscular action—as when he is required to take off his shoes or roll up his sleeves—is immaterial, unless all bodily action were synonymous with testimonial utterance; for, as already observed, not compulsion alone is the component idea of the privilege, but testimonial compulsion. What is obtained from the accused by such action is not testimony about his body, but his body itself. Unless some attempt is made to secure a communication, written or oral, upon which reliance is to be placed as involving his consciousness

of the facts and the operations of his mind in expressing it, the demand upon him is not a testimonial one."

To compel the accused to use his voice, *Johnson* v. *Com.*, 115 Pa. 369; or to make an inscription of handwriting, *State* v. *Fritz*, 23 La. Ann. 55; or to point out places and articles, have been considered violations of the privilege. The use of accused's utterances for forming a witness' opinion as to his sanity is a dubitable case only when compulsion has been resorted to, *People* v. *Truck*, 170 N. Y. 203. The remaining instances are for the most part outside the privilege, although the different courts have varied much in the strictness of their interpretation. Thus it has been held that it is proper to compel the accused to face the jury, *People* v. *Olivcria*, 127 Cal. 376; *People* v. *Gardner*, 144 N. Y. 119; *State* v. *Reasley*, 100 Iowa 231; *Coles* v. *State*, 23 Ohio C. C. 313. CONTRA, *Blackwell* v. *State*, 67 Ga. 76; *Williams* v. *State*, 98 Ala. 52; to compel him to put on his hat or to remove a veil, *Benson* v. *State*, (Tex. Crim. Rep.) 69 S. W. 165; *Rice* v. *Rice*, 47 N. J. Eq. 559; to force him to place his foot in a track or in a pan of mud for the purpose of comparing the track so made with others, *Walker* v. *State*, 7 Tex. Crim. Rep. 246; *Pitts* v. *State*, 60 Tex. Crim. Rep. 524; *State* v. *Graham*, 74 N. C. 648; *Potter* v. *State*, 92 Ala. 37; *Magee* v. *State*, 92 Miss. 865. But there is respectable authority opposed to this doctrine. *Day* v. *State*, 63 Ga. 667; *Stokes* v. *State*, 64 Tenn. (5 Baxt.) 619. There is also a division of authority upon the question as to the admissibility of evidence secured by a forcible examination of the accused. *State* v. *Ah Chuey*, 14 Nev. 79, 33 Am. Rep. 488; *O'Brien* v. *State*, 125 Ind. 38; *State* v. *Tettaton*, 159 Mo. 354; *State* v. *Garrett*, 71 N. C. 85; *State* v. *Prudhomme*, 25 La. Ann. 522 hold such evidence admissible, while *State* v. *Height*, 117 Iowa 650, 94 Am. St. Rep. 323; *People* v. *McCoy*, 45 How. Pr. 216; *State* v. *Nordstrom*, 7 Wash. 506; *Blackwell* v. *State*, 67 Ga. 76, hold that the admission of such evidence violates the privilege. In England and in Canada by statute, any person in lawful custody must submit to the taking of identifying measurements. 34 and 35 Vict. c. 112, s. 6; St. 1898 c. 54. In *U. S.* v. *Cross*, 20 D. C. 365 the measurements of defendant made in the marshal's office were admitted for the purpose of comparison and identification, and in *State* v. *Nordstrom, supra,* measurements of defendant's feet were admitted to contradict testimony that he could not wear certain shoes. *State* v. *Ellwood*, 17 R. I. 763; *Thompson* v. *State*, 45 Tex. Crim. Rep. 190; *Bridges* v. *State*, 86 Miss. 377. In *Matter* of *Molineux* v. *Collins*, 177 N. Y. 395, the taking of the measurements and the photograph according to the Bertillon system in the state prison of New York under statute was referred to but the question in the case was raised upon a different issue, as the plaintiff did not question the right of the state to require the identifying marks.

A careful examination and comparison of the cases bearing upon this point lead to the conclusion that the Federal court was justified in denying the writ of *habeas corpus*. Upon reason it would seem that a tribunal should be entitled to have before it as well the lines in the hand and fingers as marks, scars or any other bodily peculiarity of the accused, and with no greater violation of his constitutional right. L. H. L.